

AMENDED IN SENATE APRIL 5, 2010

**SENATE BILL**

**No. 1425**

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**Introduced by Senators Simitian and Correa**  
*(Principal coauthor: Assembly Member Hernandez)*  
*(Coauthor: Senator DeSaulnier)*

February 19, 2010

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An act to amend Sections 22112.5, 22119.2, 22461, 22905, 24214.5, 26505, and 26806 of the Education Code, and to amend Sections 20221, 20630, 20636, 20636.1, and 21220 of, and to add ~~Section 7500.5 to~~ Sections 7500.5 and 21220.3 to, the Government Code, relating to public retirement systems.

LEGISLATIVE COUNSEL'S DIGEST

SB 1425, as amended, Simitian. Public retirement: final compensation: computation: retirees.

The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System (PERS), which provides a defined benefit to its members based on age at retirement, service credit, and final compensation. PERL defines "final compensation" for purposes of calculating a member's retirement allowance. The State Teachers' Retirement Law (*STRL*) and the retirement laws for county employees and city employees also provide for a defined benefit based on age at retirement, service credit, and final compensation.

This bill would provide, ~~effective July 1, 2011,~~ that any change in salary, compensation, or remuneration principally for the purpose of enhancing a member's benefits would not be included in the calculation of a member's final compensation for purposes of determining that member's defined benefit. The bill would *generally* require the board of each state and local public retirement system to establish, by

regulation, accountability provisions that would include an ongoing audit process to ensure that a change in a member's salary, compensation, or remuneration is not made principally for the purpose of enhancing a member's retirement benefits. This bill would *revise the definition of "creditable compensation" and would limit the calculation of a member's final compensation to an amount not to exceed the average increase in compensation received within the final compensation period and the 2 preceding years by employees in the same or a related group as that member.* This bill would also require a board of each state and local public retirement system to establish, by regulation, a requirement that a retired person may not perform services for any employer covered by a state or local retirement system until that person has been separated from service for a period of at least ~~6 months~~ 180 days. *This bill would provide for the implementation of these required changes under the laws that govern PERS and STRL.*

This bill includes Legislative findings expressing the public purpose that would be served by the enactment of this bill ~~and expresses the Legislature's intent to enact legislation that would ensure that these provisions are implemented by all state and local public retirement systems.~~

*This bill would, except as otherwise specified, provide that its provisions would become operative on July 1, 2011. This bill would further provide that it would only become operative if AB 1987 is also enacted and takes effect on or before January 1, 2011.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. (a) The Legislature finds and declares that:
- 2 (1) State and local public retirement boards have been authorized
- 3 under the law to administer retirement systems that provide
- 4 adequate, secure retirement benefits ~~for beneficiaries~~ *to participants*
- 5 who dedicate their life's work to public service, *and their*
- 6 *beneficiaries.*
- 7 (2) Employees partner with their public agency employers to
- 8 fund this benefit.
- 9 (3) Any manipulation of those benefits creates harm for the
- 10 employees, beneficiaries, employers, and taxpayers and should
- 11 not be permitted.

1 (b) The Legislature further finds and declares ~~that the~~ *that*:  
2 (1) *The efficacy of the retirement systems is threatened by the*  
3 *behavior of those who seek to unfairly and unjustifiably enhance*  
4 *or “spike” their pensions.*

5 (e)  
6 (2) Neither the Legislature nor the courts ever anticipated a  
7 circumstance where the application of the retirement law would  
8 result in a method that permits inequitable application of  
9 compensation rules in order to enhance an individual’s retirement  
10 allowance.

11 (d)  
12 (3) It is the responsibility of the Legislature to provide guidance  
13 to every retirement system so ~~they that~~ *each system* can determine  
14 the proper elements that go into calculating a member’s retirement  
15 benefit as recognized by the laws governing ~~the~~ *each* retirement  
16 system.

17 (e)  
18 (4) Retirement systems must employ sound ~~principals~~ *principles*  
19 that provide consistent treatment of compensation throughout a  
20 member’s career and consistent treatment of compensation  
21 *earnable among a class all classes* of employees.

22 (f)  
23 (5) In order to provide consistent treatment across the *retirement*  
24 *systems, the reporting system between the procedures used by*  
25 *each retirement system and each its participating employer*  
26 *employers* must be sufficiently precise so as to enable the  
27 retirement system to distinguish between items of remuneration  
28 that are and are not properly included in a member’s final  
29 compensation.

30 (c) *The Legislature further finds and declares that consistent*  
31 *administration of state and local public retirement systems is a*  
32 *matter of statewide concern.*

33 (d) *The Legislature further finds and declares that the*  
34 *procedures contained in this act provide the appropriate method*  
35 *for resolving the inequitable application of compensation rules;*  
36 *and therefore, provide for the consistent administration of state*  
37 *and local retirement systems that is in the public’s best interest.*

38 SEC. 2.—Section 7500.5 is added to the Government Code, to  
39 read:

1     ~~7500.5.— (a) In order to safeguard the integrity and soundness~~  
2 ~~of all public retirement systems, assure prompt delivery of benefits~~  
3 ~~and related services to the participants and their beneficiaries, and~~  
4 ~~minimize employer expenses, all state and local public retirement~~  
5 ~~systems shall, at a minimum, administer their systems in~~  
6 ~~compliance with the provisions of this section. Nothing in this~~  
7 ~~section shall be construed to limit the Legislature’s authority to~~  
8 ~~adopt more restrictive provisions applicable to a state or local~~  
9 ~~public retirement system.~~

10     ~~(b) The board of each state and local public retirement system~~  
11 ~~shall establish, by regulation, accountability provisions applicable~~  
12 ~~to participating employers. Those accountability provisions shall~~  
13 ~~include an ongoing audit process to validate compliance with the~~  
14 ~~provisions of this section and penalty provisions for noncompliance~~  
15 ~~with the provisions of this section, including, but not limited to,~~  
16 ~~untimely or inaccurate submissions of any information the board~~  
17 ~~may require in the administration of the system.~~

18     ~~(c) Any payrate, salary, special compensation, or other~~  
19 ~~remuneration determined by the board of a state or local public~~  
20 ~~retirement system to have been paid for the principal purpose of~~  
21 ~~enhancing a member’s benefits under that system shall not be~~  
22 ~~included in any calculation of compensation earnable. Any~~  
23 ~~presumption by the board that salary or other remuneration was~~  
24 ~~paid for the principal purpose of enhancing a member’s benefit~~  
25 ~~under the system may be rebutted by the member or by the~~  
26 ~~employer on behalf of the member. Upon receipt of sufficient~~  
27 ~~evidence to the contrary, a presumption by the board that salary~~  
28 ~~or other remuneration was paid for the principal purpose of~~  
29 ~~enhancing a member’s benefits under that system may be reversed.~~

30     ~~(d) Cash conversions of accrued employee benefits in amounts~~  
31 ~~that exceed the amount that is both earned and payable to the~~  
32 ~~member during a pay period shall not be credited to or included~~  
33 ~~in any calculation of compensation earnable by any state or local~~  
34 ~~public retirement system.~~

35     ~~(e) Final settlement or termination pay or similar payment that~~  
36 ~~is received by a member in anticipation of retirement, upon~~  
37 ~~retirement, or separation from employment, shall not be credited~~  
38 ~~to or included in any calculation of compensation earnable by any~~  
39 ~~state or local public retirement system.~~

1 (f) A retired person, who has not reinstated following retirement,  
2 whether or not he or she has attained the normal retirement age,  
3 shall have a bona fide separation in service before performing  
4 service for any employer covered by a state or local retirement  
5 system as an employee, through a third party, or as an independent  
6 contractor. A board of a state or local retirement system shall  
7 establish, by regulation, the criteria under which a bona fide  
8 separation is satisfied. A bona fide separation established by the  
9 system shall not be less than six months.

10 (g) Compensation credited to, or included in, any calculation  
11 of compensation earnable for an employee who is not in a group  
12 or class shall not exceed, during the final compensation period as  
13 well as two years immediately preceding the final compensation  
14 period, the average increase in compensation earnable during the  
15 same period for all employees of that same employer who are in  
16 the closest related group or class.

17 (h) For the purposes of this section, the following definitions  
18 shall apply:

19 (1) "A group or class of employees" means a number of  
20 employees of the same employer considered together because they  
21 share job similarities, work location, collective bargaining unit, or  
22 other logical work grouping. Under no circumstance shall one  
23 employee be considered a group or class.

24 (2) "Payrate or salary" means the normal monthly rate of pay  
25 or monthly base pay of the member paid in cash and pursuant to  
26 publicly available pay schedules to similarly situated members of  
27 the same group or class of employment for services rendered on  
28 a full-time basis during normal working hours.

29 (3) "Payrate or salary for a member who is not in a group or  
30 class" means the monthly rate of pay or monthly base pay or salary  
31 of the member, paid in cash and pursuant to publicly available pay  
32 schedules, for services rendered on a full-time basis during normal  
33 working hours, subject to the limitations of subdivision (g).

34 (4) "Special compensation" means a payment received for  
35 special skills, knowledge, abilities, work assignment, workdays  
36 or hours, or other work conditions.

37 (5) "Compensation earnable" means the salary or payrate,  
38 special compensation, or other remuneration of the member used  
39 in the determination of final compensation for the purposes of  
40 calculation of a member's retirement benefit.

1     ~~SEC. 3.— (a) It is the intent of the Legislature to enact changes~~  
2 ~~in the Education Code applicable to the State Teachers’ Retirement~~  
3 ~~System (Part 13 (commencing with Section 22000) of Title 1 of~~  
4 ~~the Education Code) to implement the provisions established in~~  
5 ~~Section 7500.5 of the Government Code.~~

6     ~~(b) It is the intent of the Legislature to enact changes in the~~  
7 ~~Public Employee’s Retirement Law (Part 3 (commencing with~~  
8 ~~Section 20000) of Division 5 of Title 2 of the Government Code)~~  
9 ~~to implement the provisions established in Section 7500.5 of the~~  
10 ~~Government Code.~~

11     ~~(c) It is the intent of the Legislature to enact changes in the~~  
12 ~~County Employees Retirement Law (Part 3 (commencing with~~  
13 ~~Section 31200) of Division 4 of Title 3 of the Government Code)~~  
14 ~~to implement the provisions established in Section 7500.5 of the~~  
15 ~~Government Code.~~

16     ~~(d) It is the intent of the Legislature to enact changes to Chapter~~  
17 ~~2 (commencing with Section 45300) of Division 5 of Title 4 of~~  
18 ~~the Government Code, governing retirement plans established by~~  
19 ~~cities, to implement the provisions established in Section 7500.5~~  
20 ~~of the Government Code.~~

21     ~~(e) It is the intent of the Legislature to enact changes to Chapter~~  
22 ~~4 (commencing with Section 50800) of Part 1 of Division 1 of~~  
23 ~~Title 5 of the Government Code, governing police officers’ pension~~  
24 ~~fund laws and firemen’s pension fund laws, to implement the~~  
25 ~~provisions established in Section 7500.5 of the Government Code.~~

26     ~~SEC. 4. The provisions of this act shall be operative for all~~  
27 ~~active and future members of the applicable retirement systems~~  
28 ~~commencing on July 1, 2011.~~

29     ~~SEC. 2. Section 22112.5 of the Education Code is amended to~~  
30 ~~read:~~

31     ~~22112.5. (a) “Class of employees” means a number of~~  
32 ~~employees considered as a group because they are employed to~~  
33 ~~perform similar duties, are employed in the same type of program,~~  
34 ~~or share other similarities related to the nature of the work being~~  
35 ~~performed.~~

36     ~~(b) A class of employees may be comprised of one person if no~~  
37 ~~other person employed by the employer performs similar duties,~~  
38 ~~is employed in the same type of program, or shares other~~  
39 ~~similarities related to the nature of the work being performed and~~

1 ~~that same class is in common use among other employers. One~~  
2 ~~employee shall not be considered a class of employees.~~

3 (c) The board shall have the right to override the determination  
4 by an employer as to whether or not a group ~~or an individual~~  
5 constitutes a “class of employees” within the meaning of this  
6 section.

7 ~~(d) The amendments to this section during the 1995–96 Regular~~  
8 ~~Session of the Legislature shall be deemed to have become~~  
9 ~~operative on July 1, 1996.~~

10 SEC. 3. Section 22119.2 of the Education Code is amended to  
11 read:

12 22119.2. (a) “Creditable compensation” means remuneration  
13 that is payable in cash by an employer to all persons in the same  
14 class of employees, *if applicable*, and is paid to an employee for  
15 performing creditable service. *Contributions paid on creditable*  
16 *compensation shall be credited to either the member’s Defined*  
17 *Benefit Program or the Defined Benefit Supplement Program, as*  
18 *applicable, in accordance with subdivisions (b) and (f) and Section*  
19 *22905. Creditable*

20 (1) *Creditable* compensation shall ~~include~~ *be designated as*  
21 *either of the following:*

22 (1)

23 (A) *Salary or wages paid in accordance with a salary schedule*  
24 *or employment agreement for services performed or the use of an*  
25 *employer-approved leave during a specified period of time, the*  
26 *right of which accrues in proportion to the service performed or*  
27 *the leave used.*

28 (2)

29 (B) *Remuneration that is paid in addition to salary, providing*  
30 *it is payable to all persons who are in the same class of employees,*  
31 *if applicable, in the same dollar amount, the same percentage of*  
32 *salary, or the same percentage of the amount being distributed.*  
33 *For purposes of this subparagraph, “remuneration that is paid in*  
34 *addition to salary” shall include:*

35 (i) *Reimbursements or allowances for expenses, the payment of*  
36 *which is not substantiated pursuant to Section 274(d) of the*  
37 *Internal Revenue Code.*

38 (ii) *Cash payments made by the employer in exchange for a*  
39 *member’s waiver of a right to receive any payment, amount, or*  
40 *benefit described in paragraphs (5) and (6) of subdivision (c).*

1 (iii) Compensation that is payable for a specified number of  
 2 times as limited by law, a collective bargaining agreement, or an  
 3 employment agreement.

4 (iv) Lump-sum payments or bonus payments that are paid for  
 5 meeting career, educational, age, or performance-related criteria,  
 6 the right of which does not accrue in proportion to the service  
 7 performed or leave used.

8 (v) Any other payments the board may determine, pursuant to  
 9 regulations, to be “remuneration that is paid in addition to salary.

10 ~~(3) Remuneration that is paid for the use of sick leave, vacation,~~  
 11 ~~and other employer-approved leave, except as provided in~~  
 12 ~~paragraph (4) of subdivision (e).~~

13 (2) Creditable compensation shall include the following:

14 ~~(4)~~

15 (A) Member contributions that are picked up by an employer  
 16 pursuant to Section 22903 or 22904.

17 ~~(5)~~

18 (B) Amounts that are deducted from a member’s compensation,  
 19 including, but not limited to, salary deductions for participation  
 20 in a deferred compensation plan; deductions to purchase an annuity  
 21 contract, tax- deferred retirement plan, or insurance program; and  
 22 contributions to a plan that meets the requirements of Section 125,  
 23 401(k), ~~or~~ 403(b), or 457 of Title 26 of the United States Code.

24 ~~(6)~~

25 (C) Any other ~~payments~~ amounts the board ~~determines~~ may  
 26 determine, pursuant to regulations, to be “creditable  
 27 compensation.”

28 (b) Any salary or other remuneration determined by the board  
 29 to have been paid for the principal purpose of ~~enhancing~~ to enhance  
 30 a member’s benefits ~~under the plan~~ shall not be credited under the  
 31 Defined Benefit Program. Contributions on that compensation  
 32 shall be credited to the Defined Benefit Supplement Program. A  
 33 presumption by the board that salary or other remuneration was  
 34 paid for the principal purpose of ~~enhancing~~ to enhance the  
 35 member’s benefits ~~under the plan~~ may be rebutted by the member  
 36 or by the employer on behalf of the member. Upon receipt of  
 37 sufficient evidence to the contrary, a presumption by the board  
 38 that salary or other remuneration was paid for the principal purpose  
 39 of ~~enhancing~~ to enhance the member’s benefits ~~under the plan~~  
 40 may be reversed. For the purposes of this subdivision, the following

1 salary or remuneration shall be presumed to have been paid to  
2 enhance a member's benefits:

3 (1) Remuneration increasing a member's compensation earnable  
4 from one year to the next during the final compensation period or  
5 in either of the two years prior to the final compensation period  
6 in excess of the greater of either of the following:

7 (A) Ten percent.

8 (B) Twice the percentage increase in the average compensation  
9 earnable by active members of the Defined Benefit Program from  
10 the prior year, as determined by the system.

11 (2) Any other salary or remuneration determined by the board  
12 to have been paid to enhance a member's benefits.

13 (c) "Creditable compensation" does not mean and shall not  
14 include:

15 (1) Remuneration that is not payable in cash or is not payable  
16 to all persons who are in the same class of employees.

17 (2) Remuneration that is paid for service that is not creditable  
18 service pursuant to Section 22119.5.

19 (3) Remuneration that is paid in addition to salary if it is not  
20 payable to all persons in the same class of employees in the same  
21 dollar amount, the same percentage of salary, or the same  
22 percentage of the amount being distributed pursuant to  
23 *subparagraph (B) of paragraph (2) (1) of subdivision (a).*

24 (4) Remuneration that is paid for unused accumulated leave.

25 (5) Annuity contracts, tax-deferred retirement plans, or insurance  
26 programs and contributions to plans that meet the requirements of  
27 Section 125, 401(k), or 403(b) of Title 26 of the United States  
28 Code when the cost is covered by an employer and is not deducted  
29 from the member's salary.

30 (6) Fringe benefits provided by an employer.

31 (7) ~~Job-related expenses~~ Expenses paid or reimbursed by an  
32 employer.

33 (8) Expenses reimbursed by an employer, the payment of which  
34 is substantiated pursuant to Section 274(d) of the Internal Revenue  
35 Code.

36 ~~(8)~~

37 (9) Severance pay or compensatory damages or money paid to  
38 a member in excess of salary as a compromise settlement.

39 ~~(9)~~

1 (10) Any other payments the board ~~determines~~ *may determine,*  
 2 *pursuant to regulations,* not to be “creditable compensation.”

3 (d) An employer or individual who knowingly or willfully  
 4 reports compensation in a manner inconsistent with subdivision  
 5 (a) or (c) shall reimburse the plan for benefit overpayments that  
 6 occur because of that inconsistent reporting and may be subject to  
 7 prosecution for fraud, theft, or embezzlement in accordance with  
 8 the Penal Code. The system may establish procedures to ensure  
 9 that compensation reported by an employer is in compliance with  
 10 this section.

11 (e) For purposes of this section, remuneration shall be considered  
 12 payable if it would be paid to any person who meets the  
 13 qualifications or requirements specified in a collective bargaining  
 14 agreement or an employment agreement as a condition of receiving  
 15 the remuneration.

16 (f) This definition of “creditable compensation” reflects sound  
 17 principles that support the integrity of the retirement fund. Those  
 18 principles include, but are not limited to, consistent treatment of  
 19 compensation throughout a member’s career, consistent treatment  
 20 of compensation among an entire class of employees, preventing  
 21 adverse selection, and excluding from compensation earnable  
 22 remuneration that is paid for ~~the principal purpose of enhancing~~  
 23 *to enhance* a member’s benefits ~~under the plan~~. The board shall  
 24 determine the appropriate crediting of contributions between the  
 25 Defined Benefit Program and the Defined Benefit Supplement  
 26 Program according to these principles, to the extent not otherwise  
 27 specified pursuant to this part.

28 ~~(g) The section shall become operative on July 1, 2002, if the~~  
 29 ~~revenue limit cost-of-living adjustment computed by the~~  
 30 ~~Superintendent of Public Instruction for the 2001-02 fiscal year~~  
 31 ~~is equal to or greater than 3.5 percent. Otherwise this section shall~~  
 32 ~~become operative on July 1, 2003.~~

33 *SEC. 4. Section 22461 of the Education Code is amended to*  
 34 *read:*

35 22461. (a) ~~Upon retaining~~ *A school district, community college*  
 36 *district, county superintendent of schools, California State*  
 37 *University, or other employing agency that retains the services of*  
 38 *a retired member under Section 24116, 24214, or 24215, the school*  
 39 ~~district, community college district, county superintendent of~~  
 40 ~~schools, California State University, or other employing agency~~

1 shall do both of the following regardless of whether the retired  
2 member performs the services as an employee of the employer,  
3 an employee of a third party, or an independent contractor:

4 (1) ~~Advise Prior to retention, advise~~ the retired member of the  
5 earnings limitation set forth in Sections 24116, 24214, *24214.5*,  
6 and 24215.

7 (2) Maintain accurate records of the retired member's earnings  
8 and report those earnings monthly to the system and the retired  
9 member regardless of the method of payment or the fund from  
10 which the payments were made.

11 (b) This section shall not be construed to make any school  
12 district, community college district, county superintendent of  
13 schools, the California State University, or other employing agency  
14 liable for any amount paid to the retired member in excess of the  
15 earnings limitation under any circumstance, including the failure  
16 to inform the retired member that continuation of service would  
17 exceed the limitations.

18 *SEC. 5. Section 22905 of the Education Code is amended to*  
19 *read:*

20 22905. (a) Member contributions pursuant to Section 22901,  
21 employer contributions pursuant to Section 22903 or 22904, and  
22 member contributions made by an employer pursuant to Section  
23 22909 shall be credited to the member's individual account under  
24 the Defined Benefit Program or the Defined Benefit Supplement  
25 Program, whichever is applicable pursuant to the provisions of  
26 this part.

27 (b) Member and employer contributions on a member's  
28 compensation under the following circumstances shall be credited  
29 to the member's Defined Benefit Supplement account:

30 (1) Compensation for creditable service that exceeds one year  
31 in a school year.

32 (2) Compensation that is consistent with subdivision (b) of  
33 Section 22119.2.

34 ~~Compensation that is payable for a specified number of times~~  
35 ~~as limited by law, a collective bargaining agreement, or an~~  
36 ~~employment agreement~~ *Remuneration that is paid in addition to*  
37 *salary, in accordance with subparagraph (B) of paragraph (1) of*  
38 *subdivision (a) of Section 2119.2.*

39 (4) *Remuneration increasing a member's compensation earnable*  
40 *from one year to the next in excess of the average percentage*

1 *increase in compensation earnable by the members in the closest*  
2 *related class of employees during the same period reported by*  
3 *each employer, as determined by the system, providing that:*

4 (i) *The remuneration is paid to a member who is not in a class*  
5 *of employees in accordance with subdivision (b) of Section*  
6 *22112.5.*

7 (ii) *The remuneration is either paid during the member's final*  
8 *compensation period or either of the two years prior to the*  
9 *member's final compensation period.*

10 (iii) *The remuneration is not paid as a result of a legitimate*  
11 *change in the member's duties and responsibilities.*

12 (c) A member may not make voluntary pretax or posttax  
13 contributions under the Defined Benefit Supplement Program,  
14 except as provided in subdivision (d), nor may a member redeposit  
15 amounts previously distributed based on the balance in the  
16 member's Defined Benefit Supplement account.

17 (d) Member and employer contributions pursuant to paragraph  
18 (1) of subdivision (b) under the Defined Benefit Supplement  
19 Program shall be credited to the accounts of members as of July  
20 1 each year following a determination by the system under the  
21 provisions of this part that those contributions should be credited  
22 to the Defined Benefit Supplement Program. Any other  
23 contributions under the Defined Benefit Supplement Program  
24 pursuant to paragraph (2)-~~or~~, (3), *or* (4) of subdivision (b), shall  
25 be credited to the individual account of the member upon receipt  
26 by the system. Contributions to a member's Defined Benefit  
27 Supplement account shall be identified separately from the  
28 member's contributions credited under the Defined Benefit  
29 Program.

30 ~~(e) The provisions of this section shall become operative on~~  
31 ~~July 1, 2002, if the revenue limit cost-of-living adjustment~~  
32 ~~computed by the Superintendent of Public Instruction for the~~  
33 ~~2001-02 fiscal year is equal to or greater than 3.5 percent.~~  
34 ~~Otherwise this section shall become operative on July 1, 2003.~~

35 *SEC. 6. Section 24214.5 of the Education Code is amended to*  
36 *read:*

37 24214.5. (a) Notwithstanding Section 24214, ~~as of July 1,~~  
38 ~~2010,~~ *for employees retiring on or after January 1, 2011,* the  
39 postretirement compensation limitation that shall apply to the  
40 compensation for performance of the activities identified in

1 subdivision (a) or (b) of Section 22119.5 either as an employee of  
2 an employer, an employee of a third party, or as an independent  
3 contractor *within the California public school system* shall be zero  
4 dollars (\$0) during the first ~~six calendar months~~ *180 days* after a  
5 member retired for service under this part, ~~if the member is below~~  
6 ~~normal retirement age at the time the compensation is earned.~~

7 (b) If a member retired for service under this part earns  
8 compensation for performing activities identified in subdivision  
9 (a) or (b) of Section 22119.5 in excess of the limitation specified  
10 in subdivision (a), as an employee of an employer, as an employee  
11 of a third party, or as an independent contractor, within the  
12 California public school system, the member's retirement  
13 allowance shall be reduced by the amount of the excess  
14 compensation. The amount of the reduction may be equal to the  
15 monthly allowance payable but may not exceed the amount of the  
16 annual allowance payable under this part for the fiscal year in  
17 which the excess compensation was earned.

18 *SEC. 7. Section 26505 of the Education Code is amended to*  
19 *read:*

20 26505. If a participant who has retired and is receiving an  
21 annuity under the Cash Balance Benefit Program becomes  
22 reemployed prior to 60 years of age or becomes reemployed on or  
23 after 60 years of age but within one year of his or her retirement  
24 date, to perform creditable service ~~subject to coverage by the plan,~~  
25 *as an employee of an employer, as an employee of a third party,*  
26 *or as an independent contractor within the California public school*  
27 *system, the annuity shall be terminated, the employee account and*  
28 *the employer account of the participant shall be credited with*  
29 *respective balances that reflect the actuarial equivalent of the*  
30 *participant's retirement benefit as of the date of the reemployment*  
31 *and the Annuitant Reserve shall be reduced by the amount of the*  
32 *credits. If a participant who has retired and is receiving an annuity*  
33 *under the Cash Balance Benefit Program becomes reemployed on*  
34 *or after age 60 and more than one year after retirement to perform*  
35 *creditable service under the plan, the annuity shall continue and*  
36 *employee contributions and employer contributions for the*  
37 *creditable service shall be made to the plan and shall be credited*  
38 *to new employee and employer accounts established on behalf of*  
39 *the participant.*

1     *SEC. 8. Section 26806 of the Education Code is amended to*  
2 *read:*

3     26806. ~~The~~(a) *The normal form of retirement benefit under*  
4 *this part is a lump-sum payment. Upon distribution of the*  
5 *lump-sum payment to the participant, no further benefits shall be*  
6 *payable from the plan with respect to the Cash Balance Benefit*  
7 *Program. The lump-sum payment shall not be payable before 180*  
8 *days have elapsed following the date of termination of employment.*

9     (b) *The application to receive the normal form of a retirement*  
10 *benefit shall be automatically canceled if the participant performs*  
11 *creditable service as an employee of an employer, as an employee*  
12 *of a third party, or as an independent contractor within the*  
13 *California public school system within 180 days following the date*  
14 *of termination of employment.*

15     *SEC. 9. Section 7500.5 is added to the Government Code, to*  
16 *read:*

17     7500.5. (a) *In order to safeguard the integrity and soundness*  
18 *of public retirement systems, assure prompt delivery of benefits*  
19 *and related services to the participants and their beneficiaries,*  
20 *and minimize employer expenses, state and local public retirement*  
21 *systems shall administer retirement benefits in accordance with*  
22 *the principles articulated in this section. Nothing in this section*  
23 *shall be construed to limit the Legislature's authority to adopt*  
24 *more restrictive benefit provisions applicable to a state or local*  
25 *public retirement system.*

26     (b) *The board of each state and local public retirement system*  
27 *shall establish, by statute or regulation, accountability provisions*  
28 *that shall include an audit process to ensure compliance with the*  
29 *principles articulated in the provisions of this section. The*  
30 *accountability provisions shall be enforceable by the imposition*  
31 *of monetary penalties or fees, including, but not limited to, untimely*  
32 *or inaccurate submissions of any information that the board may*  
33 *require in the administration of the system.*

34     (c) *Any payrate, salary, special compensation, or other*  
35 *remuneration determined by the board of a state or local public*  
36 *retirement system to have been paid for the principal purpose of*  
37 *enhancing a member's retirement benefits under that system shall*  
38 *not be included in compensation earnable. Where the board of a*  
39 *state or local public retirement system determines that payrate,*  
40 *salary, special compensation, or other remuneration was paid for*

1 *the principal purpose of enhancing a member's benefit, the member*  
2 *or the employer may present evidence to the contrary. Upon receipt*  
3 *of sufficient evidence to the contrary, a board may reverse its*  
4 *determination that payrate, salary, special compensation, or other*  
5 *remuneration was paid for the principal purpose of enhancing a*  
6 *member's retirement benefits.*

7 *(d) Cash conversions of accrued employee benefits in amounts*  
8 *that exceed the amount that is both earned and payable to the*  
9 *member during the member's applicable final compensation*  
10 *measurement period shall not be credited to, or included in,*  
11 *compensation earnable by any state or local public retirement*  
12 *system.*

13 *(e) Final settlement or termination pay or any similar payment*  
14 *that is received by a member in anticipation of retirement, or*  
15 *separation from employment, or upon retirement, shall not be*  
16 *included in compensation earnable by any state or local public*  
17 *retirement system.*

18 *(f) A retired person, who has not reinstated following retirement,*  
19 *shall have a separation in service for a period of at least 180 days*  
20 *before performing service for any employer covered by the state*  
21 *or local retirement system from which he or she retired, whether*  
22 *as an employee, through a third party, or as an independent*  
23 *contractor. This requirement shall apply to all persons who retire*  
24 *on and after January 1, 2011.*

25 *(g) Any increase in compensation earnable for an employee*  
26 *who is not in a group or class shall not exceed, during the final*  
27 *compensation period as well as two years immediately preceding*  
28 *the final compensation period, the average increase in*  
29 *compensation earnable during the same period for all similarly*  
30 *situated members in the closest related group or class of that same*  
31 *employer.*

32 *(h) For the purposes of implementing this section, all state or*  
33 *local public retirement systems shall have terms or definitions*  
34 *consistent with the following:*

35 *(1) "A group or class" means a number of employees of the*  
36 *same employer considered together because they share job*  
37 *similarities, work location, collective bargaining unit, or other*  
38 *logical work grouping. Under no circumstance shall one employee*  
39 *be considered a group or class.*

1 (2) "Payrate" or "salary" means the normal monthly rate of  
2 pay or monthly base pay of the member paid in cash and pursuant  
3 to publicly available pay schedules to similarly situated members  
4 of the same group or class for services rendered on a full-time  
5 basis during normal working hours.

6 (3) "Payrate" or "salary" for a member who is not in a group  
7 or class means the monthly rate of pay or monthly base pay, paid  
8 in cash and pursuant to publicly available pay schedules, for  
9 services rendered on a full-time basis during normal working  
10 hours, subject to the limitations of subdivision (g).

11 (4) "Special compensation" includes a payment received for  
12 special skills, knowledge, abilities, work assignment, workdays or  
13 hours, or other work conditions.

14 (5) "Compensation earnable" includes payrate, salary, special  
15 compensation, or other remuneration, or any combination of the  
16 forgoing, of the member.

17 SEC. 10. Section 20221 of the Government Code is amended  
18 to read:

19 20221. Each state-agency employer, school employer, and the  
20 chief administrative officer of a contracting agency or any other  
21 person who its governing body may designate shall furnish all of  
22 the following:

23 (a) Immediate notice to the board, in the manner prescribed by  
24 the system, of the change in status of any member resulting from  
25 hiring, transfer, promotion, leave of absence, resignation,  
26 reinstatement, dismissal, or death.

27 (b) Immediate notice to the board, in the manner prescribed by  
28 the system, of any change that may impact a member's payrate or  
29 special compensation, as defined in Section 20636 or 20636.1,  
30 resulting from the adoption, termination or amendment of any  
31 labor policy or agreement.

32 ~~(b)~~  
33 (c) Any additional information concerning any member or the  
34 employer that the board may require in the administration of this  
35 system.

36 ~~(e)~~  
37 (d) The services of its officer and departments that the board  
38 may request in connection with claims by members against this  
39 system.

1 *The board may assess a reasonable fee on any employer who*  
2 *fails to provide information as required by this section within*  
3 *applicable the time limits.*

4 *SEC. 11. Section 20630 of the Government Code is amended*  
5 *to read:*

6 20630. (a) As used in this part, “compensation” means the  
7 remuneration paid out of funds controlled by the employer in  
8 payment for the member’s services performed during normal  
9 working hours or for time during which the member is excused  
10 from work because of any of the following:

11 (1) Holidays.

12 (2) Sick leave.

13 (3) Industrial disability leave, during which, benefits are payable  
14 pursuant to Sections 4800 and 4850 of the Labor Code, Article 4  
15 (commencing with Section 19869) of Chapter 2.5 of Part 2.6, or  
16 Section 44043 or 87042 of the Education Code.

17 (4) Vacation.

18 (5) Compensatory time off.

19 (6) Leave of absence.

20 (b) When compensation is reported to the board, the employer  
21 shall identify the pay period in which the compensation was earned  
22 regardless of when reported or paid. Compensation shall be  
23 reported in accordance with Section 20636 *or* 20636.1 and shall  
24 not exceed compensation earnable, as defined in Section 20636  
25 *or* 20636.1.

26 (c) *The board may assess a reasonable amount to cover the cost*  
27 *of audit, adjustment, or correction, where it determines that an*  
28 *employer knowingly failed to comply with subdivision (b). An*  
29 *employer will be found to have knowingly failed to comply with*  
30 *subdivision (b) if the board determines that the employer either:*

31 (1) *Knew or should have known that the compensation reported*  
32 *was not compensation earnable, as defined in Section 20636 or*  
33 *20636.1.*

34 (2) *Failed to identify the pay period in which compensation*  
35 *earnable was earned as required.*

36 (d) *An employer shall not pass on to an employee any costs*  
37 *assessed pursuant to subdivision (c).*

38 *SEC. 12. Section 20636 of the Government Code is amended*  
39 *to read:*

1 20636. (a) “Compensation earnable” by a member means the  
2 payrate and special compensation of the member, as defined by  
3 subdivisions (b), (c), and (g), and as limited by Section 21752.5.

4 (b) (1) “Payrate” means the normal monthly rate of pay or  
5 *monthly* base pay of the member paid in cash to similarly situated  
6 members of the same group or class of employment for services  
7 rendered on a full-time basis during normal working hours,  
8 pursuant to publicly available pay schedules. “Payrate,” for a  
9 member who is not in a group or class, means the monthly rate of  
10 pay or *monthly* base pay of the member, paid in cash and pursuant  
11 to publicly available pay schedules, for services rendered on a  
12 full-time basis during normal working hours, subject to the  
13 limitations of paragraph (2) of subdivision (e).

14 (2) “Payrate” shall include an amount deducted from a member’s  
15 salary for any of the following:

16 (A) Participation in a deferred compensation plan.

17 (B) Payment for participation in a retirement plan that meets  
18 the requirements of Section 401(k) of Title 26 of the United States  
19 Code.

20 (C) Payment into a money purchase pension plan and trust that  
21 meets the requirements of Section 401(a) of Title 26 of the United  
22 States Code.

23 (D) Participation in a flexible benefits program.

24 (3) The computation for a leave without pay of a member shall  
25 be based on the compensation earnable by him or her at the  
26 beginning of the absence *and shall report special compensation*  
27 *separately from payrate.*

28 (4) The computation for time prior to entering state service shall  
29 be based on the compensation earnable by him or her in the position  
30 first held by him or her in state service.

31 (c) (1) Special compensation of a member includes a payment  
32 received for special skills, knowledge, abilities, work assignment,  
33 workdays or hours, or other work conditions.

34 (2) Special compensation shall be limited to that which is  
35 received by a member pursuant to a labor policy or agreement or  
36 as otherwise required by state or federal law, to similarly situated  
37 members of a group or class of employment that is in addition to  
38 payrate. If an individual is not part of a group or class, special  
39 compensation shall be limited to that which the board determines  
40 is received by similarly situated members in the closest related

1 group or class that is in addition to payrate, subject to the  
2 limitations of paragraph (2) of subdivision (e).

3 (3) Special compensation shall be for services rendered during  
4 normal working hours and, when reported to the board, the  
5 employer shall identify the pay period in which the special  
6 compensation was earned.

7 (4) Special compensation may include the full monetary value  
8 of normal contributions paid to the board by the employer, on  
9 behalf of the member and pursuant to Section 20691, if the  
10 employer's labor policy or agreement specifically provides for the  
11 inclusion of the normal contribution payment in compensation  
12 earnable.

13 (5) The monetary value of a service or noncash advantage  
14 furnished by the employer to the member, except as expressly and  
15 specifically provided in this part, is not special compensation unless  
16 regulations promulgated by the board specifically determine that  
17 value to be "special compensation."

18 (6) The board shall promulgate regulations that delineate more  
19 specifically and exclusively what constitutes "special  
20 compensation" as used in this section. *A written petition to request*  
21 *an addition to the exclusive list that identifies and defines "special*  
22 *compensation" items contained in board regulations may be made*  
23 *pursuant to Section 11340.7. A uniform allowance, the monetary*  
24 *value of employer-provided uniforms, holiday pay, and premium*  
25 *pay for hours worked within the normally scheduled or regular*  
26 *working hours that are in excess of the statutory maximum*  
27 *workweek or work period applicable to the employee under Section*  
28 *201 et seq. of Title 29 of the United States Code shall be included*  
29 *as special compensation and appropriately defined in those*  
30 *regulations.*

31 (7) Special compensation does not include any of the following:

32 (A) Final settlement pay.

33 (B) Payments made for additional services rendered outside of  
34 normal working hours, whether paid in lump sum or otherwise.

35 (8) *A written request may be submitted for the board's*  
36 *determination as to whether specific compensation items meet the*  
37 *definition of special compensation. Determinations shall be made*  
38 *on these requests within 90 calendar days of receipt of all*  
39 *information required to be submitted by the board.*

1 (C) Other payments the board has not affirmatively determined  
2 to be special compensation.

3 (d) Notwithstanding any other provision of law, payrate and  
4 special compensation schedules, ordinances, or similar documents  
5 shall be public records available for public scrutiny.

6 (e) (1) As used in this part, “group or class of employment”  
7 means a number of employees considered together because they  
8 share similarities in job duties, work location, collective bargaining  
9 unit, or other logical work-related grouping. One employee may  
10 not be considered a group or class.

11 (2) Increases in compensation earnable granted to an employee  
12 who is not in a group or class shall be limited during the final  
13 compensation period applicable to the employees, as well as the  
14 two years immediately preceding the final compensation period,  
15 to the average increase in compensation earnable during the same  
16 period reported by the employer for all ~~employees~~ *similarly*  
17 *situated members in the closest related group or class*, or who are  
18 in the same membership classification, except as may otherwise  
19 be determined pursuant to regulations adopted by the board that  
20 establish reasonable standards for granting exceptions.

21 (f) As used in this part, “final settlement pay” means pay or  
22 cash conversions of employee benefits that are in excess of  
23 compensation earnable, that are granted or awarded to a member  
24 in connection with, or in anticipation of, a separation from  
25 employment. The board shall promulgate regulations that delineate  
26 more specifically what constitutes final settlement pay.

27 (g) (1) Notwithstanding subdivision (a), “compensation  
28 earnable” for state members means the average monthly  
29 compensation, as determined by the board, upon the basis of the  
30 average time put in by members in the same group or class of  
31 employment and at the same rate of pay, and is composed of the  
32 payrate and special compensation of the member. The computation  
33 for an absence of a member shall be based on the compensation  
34 earnable by him or her at the beginning of the absence and for time  
35 prior to entering state service shall be based on the compensation  
36 earnable by him or her in the position first held by him or her in  
37 that state service.

38 (2) Notwithstanding subdivision (b), “payrate” for state members  
39 means the average monthly remuneration paid in cash out of funds  
40 paid by the employer to similarly situated members of the same

1 group or class of employment, *pursuant to publicly available pay*  
2 *schedules*, in payment for the member’s services or for time during  
3 which the member is excused from work because of holidays, sick  
4 leave, vacation, compensating time off, or leave of absence.  
5 “Payrate” for state members shall include:

6 (A) An amount deducted from a member’s salary for any of the  
7 following:

8 (i) Participation in a deferred compensation plan established  
9 pursuant to Chapter 4 (commencing with Section 19993) of Part  
10 2.6.

11 (ii) Payment for participation in a retirement plan that meets  
12 the requirements of Section 401(k) of Title 26 of the United States  
13 Code.

14 (iii) Payment into a money purchase pension plan and trust that  
15 meets the requirements of Section 401(a) of Title 26 of the United  
16 States Code.

17 (iv) Participation in a flexible benefits program.

18 (B) A payment in cash by the member’s employer to one other  
19 than an employee for the purpose of purchasing an annuity contract  
20 for a member under an annuity plan that meets the requirements  
21 of Section 403(b) of Title 26 of the United States Code.

22 (C) Employer “pick up” of member contributions that meets  
23 the requirements of Section 414(h)(2) of Title 26 of the United  
24 States Code.

25 (D) Disability or workers’ compensation payments to safety  
26 members in accordance with Section 4800 of the Labor Code.

27 (E) Temporary industrial disability payments pursuant to Article  
28 4 (commencing with Section 19869) of Chapter 2.5 of Part 2.6.

29 (F) Other payments the board may determine to be within  
30 “payrate.”

31 (3) Notwithstanding subdivision (c), “special compensation”  
32 for state members shall mean all of the following:

33 (A) The monetary value, as determined by the board, of living  
34 quarters, board, lodging, fuel, laundry, and other advantages of  
35 any nature furnished to a member by his or her employer in  
36 payment for the member’s services.

37 (B) Compensation for performing normally required duties,  
38 such as holiday pay, bonuses (for duties performed on regular work  
39 shift), educational incentive pay, maintenance and noncash  
40 payments, out-of-class pay, marksmanship pay, hazard pay,

1 motorcycle pay, paramedic pay, emergency medical technician  
2 pay, Peace Officer Standards and Training (POST) certificate pay,  
3 and split shift differential.

4 (C) Compensation for uniforms, except as provided in Section  
5 20632.

6 (D) Other payments the board may determine to be within  
7 “special compensation.”

8 (4) “Payrate” and “special compensation” for state members do  
9 not include any of the following:

10 (A) The provision by the state employer of a medical or hospital  
11 service or care plan or insurance plan for its employees (other than  
12 the purchase of annuity contracts as described below in this  
13 subdivision), a contribution by the employer to meet the premium  
14 or charge for that plan, or a payment into a private fund to provide  
15 health and welfare benefits for employees.

16 (B) A payment by the state employer of the employee portion  
17 of taxes imposed by the Federal Insurance Contribution Act.

18 (C) Amounts not available for payment of salaries and that are  
19 applied by the employer for the purchase of annuity contracts  
20 including those that meet the requirements of Section 403(b) of  
21 Title 26 of the United States Code.

22 (D) Benefits paid pursuant to Article 5 (commencing with  
23 Section 19878) of Chapter 2.5 of Part 2.6.

24 (E) Employer payments that are to be credited as employee  
25 contributions for benefits provided by this system, or employer  
26 payments that are to be credited to employee accounts in deferred  
27 compensation plans. The amounts deducted from a member’s  
28 wages for participation in a deferred compensation plan may not  
29 be considered to be “employer payments.”

30 (F) Payments for unused vacation, annual leave, personal leave,  
31 sick leave, or compensating time off, whether paid in lump sum  
32 or otherwise.

33 (G) Final settlement pay.

34 (H) Payments for overtime, including pay in lieu of vacation or  
35 holiday.

36 (I) Compensation for additional services outside regular duties,  
37 such as standby pay, callback pay, court duty, allowance for  
38 automobiles, and bonuses for duties performed after the member’s  
39 regular work shift.

1 (J) Amounts not available for payment of salaries and that are  
2 applied by the employer for any of the following:

3 (i) The purchase of a retirement plan that meets the requirements  
4 of Section 401(k) of Title 26 of the United States Code.

5 (ii) Payment into a money purchase pension plan and trust that  
6 meets the requirements of Section 401(a) of Title 26 of the United  
7 States Code.

8 (K) Payments made by the employer to or on behalf of its  
9 employees who have elected to be covered by a flexible benefits  
10 program, where those payments reflect amounts that exceed the  
11 employee's salary.

12 (L) Other payments the board may determine are not "payrate"  
13 or "special compensation."

14 (5) If the provisions of this subdivision, including the board's  
15 determinations pursuant to subparagraph (F) of paragraph (2) and  
16 subparagraph (D) of paragraph (3), are in conflict with the  
17 provisions of a memorandum of understanding reached pursuant  
18 to Section 3517.5 or 3560, the memorandum of understanding  
19 shall be controlling without further legislative action, except that  
20 if the provisions of a memorandum of understanding require the  
21 expenditure of funds, those provisions may not become effective  
22 unless approved by the Legislature in the annual Budget Act. No  
23 memorandum of understanding reached pursuant to Section 3517.5  
24 or 3560 may exclude from the definition of either "payrate" or  
25 "special compensation" a member's base salary payments or  
26 payments for time during which the member is excused from work  
27 because of holidays, sick leave, vacation, compensating time off,  
28 or leave of absence. If items of compensation earnable are included  
29 by memorandum of understanding as "payrate" or "special  
30 compensation" for retirement purposes for represented and higher  
31 education employees pursuant to this paragraph, the Department  
32 of Personnel Administration or the Trustees of the California State  
33 University shall obtain approval from the board for that inclusion.

34 (6) (A) Subparagraph (B) of paragraph (3) prescribes that  
35 compensation earnable includes compensation for performing  
36 normally required duties, such as holiday pay, bonuses (for duties  
37 performed on regular work shift), educational incentive pay,  
38 maintenance and noncash payments, out-of-class pay,  
39 marksmanship pay, hazard pay, motorcycle pay, paramedic pay,  
40 emergency medical technician pay, POST certificate pay, and split

1 shift differential; and includes compensation for uniforms, except  
2 as provided in Section 20632; and subparagraph (I) of paragraph  
3 (4) excludes from compensation earnable compensation for  
4 additional services outside regular duties, such as standby pay,  
5 callback pay, court duty, allowance for automobile, and bonuses  
6 for duties performed after regular work shift.

7 (B) Notwithstanding subparagraph (A), the Department of  
8 Personnel Administration shall determine which payments and  
9 allowances that are paid by the state employer shall be considered  
10 compensation for retirement purposes for an employee who either  
11 is excluded from the definition of state employee in Section 3513,  
12 or is a nonelected officer or employee of the executive branch of  
13 government who is not a member of the civil service.

14 (C) Notwithstanding subparagraph (A), the Trustees of the  
15 California State University shall determine which payments and  
16 allowances that are paid by the trustees shall be considered  
17 compensation for retirement purposes for a managerial employee,  
18 as defined in Section 3562, or supervisory employee as defined in  
19 Section 3580.3.

20 *SEC. 13. Section 20636.1 of the Government Code is amended*  
21 *to read:*

22 20636.1. (a) Notwithstanding Section 20636, and Section  
23 45102 of the Education Code, “compensation earnable” by a school  
24 member means the payrate and special compensation of the  
25 member, as defined by subdivisions (b) and (c), and as limited by  
26 Section 21752.5.

27 (b) (1) “Payrate” means the normal monthly rate of pay or  
28 *monthly* base pay of the member paid in cash to similarly situated  
29 members of the same group or class of employment for services  
30 rendered on a full-time basis during normal working hours,  
31 *pursuant to publicly available pay schedules*. For purposes of this  
32 part, for classified members, full-time employment is 40 hours per  
33 week, and payments for services rendered, not to exceed 40 hours  
34 per week, shall be reported as compensation earnable for all months  
35 of the year in which work is performed. “Payrate,” for a member  
36 who is not in a group or class, means the monthly rate of pay or  
37 *monthly* base pay of the member, paid in cash and pursuant to  
38 publicly available pay schedules, for services rendered on a  
39 full-time basis during normal working hours, subject to the  
40 limitations of paragraph (2) of subdivision (e).

1 (A) For the purposes of this section, “classified members” shall  
2 mean members who retain membership under this system while  
3 employed with a school employer in positions not subject to  
4 coverage under the Defined Benefit Program under the State  
5 Teacher’s Retirement System.

6 (B) For the purposes of this section, and Sections 20962 and  
7 20966, “certificated members” shall mean members who retain  
8 membership under this system while employed in positions subject  
9 to coverage under the Defined Benefit Program under the State  
10 Teacher’s Retirement System.

11 (2) The computation for any leave without pay of a member  
12 shall be based on the compensation earnable by him or her at the  
13 beginning of the absence.

14 (3) The computation for time prior to entering state service shall  
15 be based on the compensation earnable by him or her in the position  
16 first held by him or her in state service.

17 (c) (1) Special compensation of a school member includes any  
18 payment received for special skills, knowledge, abilities, work  
19 assignment, workdays or hours, or other work conditions.

20 (2) Special compensation shall be limited to that which is  
21 received by a member pursuant to a labor policy or agreement or  
22 as otherwise required by state or federal law, to similarly situated  
23 members of a group or class of employment that is in addition to  
24 payrate. If an individual is not part of a group or class, special  
25 compensation shall be limited to that which the board determines  
26 is received by similarly situated members in the closest related  
27 group or class that is in addition to payrate, subject to the  
28 limitations of paragraph (2) of subdivision (e).

29 (3) Special compensation shall be for services rendered during  
30 normal working hours and, when reported to the board, the  
31 employer shall identify the pay period in which the special  
32 compensation was earned, *and shall report special compensation*  
33 *separately from payrate.*

34 (4) Special compensation may include the full monetary value  
35 of normal contributions paid to the board by the employer, on  
36 behalf of the member and pursuant to Section 20691, provided  
37 that the employer’s labor policy or agreement specifically provides  
38 for the inclusion of the normal contribution payment in  
39 compensation earnable.

1 (5) The monetary value of any service or noncash advantage  
2 furnished by the employer to the member, except as expressly and  
3 specifically provided in this part, shall not be special compensation  
4 unless regulations promulgated by the board specifically determine  
5 that value to be “special compensation.”

6 (6) The board shall promulgate regulations that delineate more  
7 specifically and exclusively what constitutes “special  
8 compensation” as used in this section. *A written petition to request*  
9 *an addition to the exclusive list that identifies and defines “special*  
10 *compensation” items contained in board regulations may be made*  
11 *pursuant to Section 11340.7. A uniform allowance, the monetary*  
12 *value of employer-provided uniforms, holiday pay, and premium*  
13 *pay for hours worked within the normally scheduled or regular*  
14 *working hours that are in excess of the statutory maximum*  
15 *workweek or work period applicable to the employee under Section*  
16 *201 et seq. of Title 29 of the United States Code shall be included*  
17 *as special compensation and appropriately defined in those*  
18 *regulations.*

19 (7) Special compensation does not include any of the following:

20 (A) Final settlement pay.

21 (B) Payments made for additional services rendered outside of  
22 normal working hours, whether paid in lump sum or otherwise.

23 (C) Any other payments the board has not affirmatively  
24 determined to be special compensation.

25 (8) *A written request may be submitted for the board’s*  
26 *determination as to whether specific compensation items meet the*  
27 *definition of special compensation. Determinations shall be made*  
28 *on these requests within 90 calendar days of receipt of all*  
29 *information required to be submitted by the board.*

30 (d) Notwithstanding any other provision of law, payrate and  
31 special compensation schedules, ordinances, or similar documents  
32 shall be public records available for public scrutiny.

33 (e) (1) As used in this part, “group or class of employment”  
34 means a number of employees considered together because they  
35 share similarities in job duties, work location, collective bargaining  
36 unit, or other logical work-related grouping. Under no  
37 circumstances shall one employee be considered a group or class.

38 (2) Increases in compensation earnable granted to any employee  
39 who is not in a group or class shall be limited during the final  
40 compensation period applicable to the employees, as well as the

1 two years immediately preceding the final compensation period,  
2 to the average increase in compensation earnable during the same  
3 period reported by the employer for all ~~employees~~ *similarly*  
4 *situated members in the closest related group or class* or who are  
5 in the same membership classification, except as may otherwise  
6 be determined pursuant to regulations adopted by the board that  
7 establish reasonable standards for granting exceptions.

8 (f) As used in this part, “final settlement pay” means any pay  
9 or cash conversions of employee benefits that are in excess of  
10 compensation earnable, that are granted or awarded to a member  
11 in connection with or in anticipation of a separation from  
12 employment. The board shall promulgate regulations that delineate  
13 more specifically what constitutes final settlement pay.

14 *SEC. 14. Section 21220 of the Government Code is amended*  
15 *to read:*

16 21220. (a) A person who has been retired under this system,  
17 for service or for disability, may not be employed in any capacity  
18 thereafter by the state, the university, a school employer, or a  
19 contracting agency, unless *any of the following conditions are*  
20 *satisfied:* ~~the~~

21 (1) *The employment qualifies for service credit in the University*  
22 *of California Retirement Plan or the State Teachers’ Retirement*  
23 *Plan,* ~~unless he.~~

24 (2) *He or she has first been reinstated from retirement pursuant*  
25 *to this chapter,* ~~or unless the employment,~~

26 (3) *For a person retiring on or after January 1, 2011, the*  
27 *employment, without reinstatement, is authorized by this article*  
28 *and at least 180 days have elapsed since that person’s retirement*  
29 *date.* ~~A~~

30 (b) A retired person whose employment without reinstatement  
31 is authorized by this article shall acquire no service credit or  
32 retirement rights under this part with respect to the employment.

33 ~~(b)~~  
34 (c) Any retired member employed in violation of this article  
35 shall:

36 (1) Reimburse this system for any retirement allowance received  
37 during the period or periods of employment that are in violation  
38 of law.

39 (2) Pay to this system an amount of money equal to the  
40 employee contributions that would otherwise have been paid during

1 the period or periods of unlawful employment, plus interest  
2 thereon.

3 (3) Contribute toward reimbursement of this system for  
4 administrative expenses incurred in responding to this situation,  
5 to the extent the member is determined by the executive officer to  
6 be at fault.

7 (e)

8 (d) Any public employer that employs a retired member in  
9 violation of this article shall:

10 (1) Pay to this system an amount of money equal to employer  
11 contributions that would otherwise have been paid for the period  
12 or periods of time that the member is employed in violation of this  
13 article, plus interest thereon.

14 (2) Contribute toward reimbursement of this system for  
15 administrative expenses incurred in responding to this situation,  
16 to the extent the employer is determined by the executive officer  
17 of this system to be at fault.

18 *SEC. 15. Section 21220.3 is added to the Government Code,*  
19 *to read:*

20 *21220.3. (a) A person who has retired under this system, for*  
21 *service or for disability, may not render services for compensation*  
22 *in any capacity for the state, the university, a school employer, or*  
23 *a contracting agency, through a third party or as an independent*  
24 *contractor, for a period of 180 days following the date of his or*  
25 *her retirement.*

26 *(b) Any retired member who provides services in violation of*  
27 *this section shall:*

28 *(1) Cease performing services for compensation and shall not*  
29 *be eligible to again perform services for a period of 180 days*  
30 *following the last date he or she performed services.*

31 *(2) Contribute toward reimbursement for administrative*  
32 *expenses incurred by the system because of the violation, to the*  
33 *extent that the retired member is determined by the executive officer*  
34 *of this system to be at fault. For purposes of this subdivision, a*  
35 *retired member shall be determined to be at fault if the retired*  
36 *member knew or should have known that he or she was performing*  
37 *services in violation of this section.*

38 *(c) Any public employer that utilizes the services of a retired*  
39 *member in violation of this section shall contribute toward*  
40 *reimbursement of this system for administrative expenses incurred*

1 *by this system because of the violation, to the extent that the*  
2 *employer is determined, by the executive officer of this system, to*  
3 *be at fault. For purposes of this subdivision, a public employer*  
4 *shall be determined to be at fault if the public employer knew or*  
5 *should have known that the retired member was performing*  
6 *services in violation of this section.*

7 *(d) This section shall apply to all persons who retire on and*  
8 *after January 1, 2011.*

9 *SEC. 16. Except as otherwise specifically provided, the*  
10 *provisions of this act shall become operative on July 1, 2011.*

11 *SEC. 17. This bill shall become operative only if Assembly Bill*  
12 *1987 of the 2009–10 Regular Session is enacted and takes effect*  
13 *on or before January 1, 2011.*

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